

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6231 OF 2015

JAI BAJRANG MATHADI KAMGAR THROUGH ITS CHAIRMAN RAMBHAJI BABAJI
WAGHMARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Mr. Anandsing Bayas
AGP for Respondent Nos. 1 to 3: Mrs. A.V. Gondhalekar.
Advocate for respondent No.5 : Mr. S.K. Shinde
Advocate for respondent No.4 : Mr. Y.I. Thole.

CORAM : S.V. GANGAPURWALA
& K.K. SONAWANE, JJ.
DATE : 1ST AUGUST , 2016.

PER COURT:

1] Tenders were invited for allotment of contract at Sangamner and other places for the purpose of loading and unloading the food-grains. Tender of respondent No.5 is accepted and that of the petitioner is rejected.

2] Mr. Bayas, learned counsel for the petitioner strenuously contends that the respondent authorities did not follow the procedure as laid down in the Govt. Resolution dated 12th September, 2014. Only two tenders were received for allotment of the work at Sangamner i.e. of the petitioner and respondent No.5. Tender of the petitioner was complete in all respects. Tender of the respondent No.5 was devoid of various details and the certificate as contemplated vide Govt. Resolution dated 12.9.2014. According to learned counsel, one of the conditions of the tender and the Government Resolution is that the society applying for the tender should possess one year's experience and the experience certificate to that effect is

to be produced. Respondent No.5 society is a defunct society and at the relevant time, it was closed. Same would be explicitly clear by the publication in the newspaper, the report of the Assistant Registrar wherein, 41 such societies were held to be defunct and guilty of irregularities. Respondent No.5 society is one of them. Learned counsel submits that even the audit report was not submitted alongwith the tender and the same was submitted subsequently. In fact, commercial bid of respondent No.5 could not have been opened as respondent No.5 failed to submit the documents, such as, Experience Certificate, Audit Report, and other relevant documents.

3] After technical bids were opened the petitioner had raised objection vide letters dated 16.3.2015 and 24.2.2015 but the said objections were not considered. One of the most important condition is that, the rates quoted by the tenderers should not have been less than the rates fixed by the Mathadi Board. Rates of respondent No.5 were 6% below the said rates. As such, on said ground also, the respondent no.5 was disqualified and his tender ought to have been rejected on the said ground itself. Learned counsel further submits the procedure as laid down in Govt. Resolution dated 12.9.2014 has been given a complete go-by. Clauses (f) and (g) has not been properly followed. For all these reasons, the work order given in favour of the respondent No.5 deserves to be set aside. Mr. Bayas further submits that on 11.11.2014, the respondent No.5 society was suspended.

4] Mr. Shinde, learned counsel for the respondent No.5 submits that respondent No.5 has complied with all terms and conditions and had

submitted all the documents necessary for the purpose. It had an experience of one year as required. Respondent No.5 society is registered in the year 1982 and functioning since then. It has started work and is regularly doing work as per the tender.

5] Mrs. Gondhalekar, AGP submits that it is only after considering the objections raised by the petitioner, the Collector, Aurangabad has passed order allotting the work to respondent No.5, as per the terms and conditions. Respondent No.5 has complied with all terms and conditions. Experience certificate was also produced. Audit report was also produced subsequently. Registration of respondent No.5 is dated 27.9.1982 and the Registration number is 487.

6] We have considered the submissions canvassed by the learned counsel for the respective parties. The scope of judicial review in case of contractual matters and that in matters involving tenders is in a limited compass. This court would not sit in appeal over the decision taken by the authority accepting the tender. This court would be concerned with the decision making process being followed and whether same is fair, reasonable or otherwise. It is only if the decision making process is not properly followed or allotment of tender is arbitrary or malafide then this court would exercise its powers of judicial review.

7] The affidavit filed by the respondent State states that certificate has been submitted by the respondent regarding the experience and audit report submitted subsequently. No condition of the Govt.

Resolution or tender can be pointed out to show that the audit report was required to be submitted alongwith the tender itself. Necessary condition was that the tenderer should possess one year's experience. The State, after having satisfied itself about the respondent No.5 possessing the experience, has accepted its tender. Respondent No.5 had offered more competitive rate than the petitioner and was the lowest. If the respondent No.5 does not make payment to the labours, in consonance with the rates determined by the Mathadi board, it is for the said labours to make a grievance in that regard. The terms of the tender would be relevant to the extent that respondent No.5 has quoted lowest rate. Making payment to the labours is another aspect, which the labours would agitate if they are not getting the same as per the rates fixed by Mathadi Board. Some free hand will have to be given to the State in matters of contract. The decision making process has been followed. After the objection had been raised, opportunity was given to the respondent No.5 and on satisfying itself, the authority has allotted tender to respondent No.5. Almost one year has lapsed now, the work has been allotted.

8] Considering the aforesaid aspects of the matter, we are not inclined to entertain the present petition. Writ petition is dismissed. No costs.

[K.K. SONAWANE]
JUDGE

[S.V. GANGAPURWALA]
JUDGE.

grt/-